IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 13 .09.2006

CORAM:

THE HON'BLE MR. JUSTICE P.JYOTHIMANI

Writ Petition No.27052 of 2006

I.Nazir Ahamed ... Petitioner

Vs.

1. The Secretary to Government
Home (Police II) Department,
Fort St.George, Chennai 9.

2. The Director General of Police,
Radhakrishnan Salai,
Mylapore, Chennai 4. ... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India for the issuance of a writ of Mandamus, directing the respondents to implement the order of the Tribunal issued in O.A.No.1956 of 2004 dated 12.05.2004 within a reasonable time and promote the petitioner as Deputy Superintendent of Police, Category I and grant him all consequential service and monetary benefits at par with his juniors.

For Petitioner :Mr.K.Venkataramani
For Respondents :Mr.A.Edwin Prabhakar
Govt.Advocate

O R D E R

This writ petition is filed for a direction against the respondent to implement the order of the Tribunal passed in O.A.No.1956 of 2004 dated 12.05.2004 and to promote the petitioner as a Deputy Superintendent of Police Category I with all service and other monetary benefits.

2. The case of the petitioner is that he was appointed as Sub Inspector of Police on 13.10.1976 and subsequently, promoted as Inspector of Police on 07.12.1987. A show cause notice was issued to the petitioner by the second respondent on 01.04.1988 for the purpose of reopening the charge which was dropped earlier in order to impose the punishment of compulsory retirement. That was the charge alleging that the petitioner has colluded with some bootleggers in respect of which an Enquiry Officer was appointed

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and conducted an enquiry who held that the charge was proved. However, the disciplinary authority having differed from the report of the Enquiry Officer has dropped the charges. It was to reopen the same, the said show cause notice was given by the second respondent on 01.04.1988. On petitioner's approaching the Tamil Nadu Administrative Tribunal by filling O.A.No.4836 of 1988, the said show cause notice which was issued by the second respondent, was set aside against which the second respondent filed W.P.No.35323 of 2002, to set aside the order of the Tribunal dated 04.03.2002. This court has set aside the order of the Tribunal on 04.08.2003, however, directing the petitioner to give explanation for the show cause notice issued by the second respondent. The petitioner has accordingly submitted his reply on 21.01.2004 based on which the second respondent has imposed a punishment of postponement of increment for three years with cumulative effect on 04.02.2004. That punishment was challenged by the petitioner before the Tamil Nadu Administrative Tribunal by filing O.A.No.654 of 2004 and the Tribunal has set aside the said punishment on 15.04.2004 and in fact the Government has also accepted the said order of the Tribunal and passed a Government Order in G.O.Ms.(D) 58 dated 19.05.2005 giving effect to the said order.

3. In another case in S.C.No.396 of 1998 dated 18.11.1998, Deputy Inspector of Police, Villupuram, has imposed a punishment of postponement of increment for one year. The petitioner challenged the said punishment and filed O.A.No.4965 of 1999 and the Tribunal, by an order dated 08.04.2002, has set aside the punishment which has become final. In the mean time, on the crucial date for preparation of panel for the year 1999-2000 for the promotion to the next post for year 1999, while the names of juniors of the petitioner were included, the petitioner's name did not find place.

4. The reason given for the same was the pendancy of another disciplinary proceedings in P.R.No.105 of 1998 and also the suspension order. That was the case wherein, the Deputy Inspector of Police, Villupuram has imposed a punishment of compulsory retirement of the petitioner from service on the ground that the petitioner has not attended duty due to the reason that he had to undergo a pilgrimage to Mecca. If was against the said order of compulsory retirement dated 1.05.1998, the petitioner has filed O.A.No.4563 of 1998 before the Tamil Nadu Administrative Tribunal and the Tribunal by an order dated 04.03.2002 has set aside the said order which was challenged by the respondent before this court in W.P.No.11618 of 2003 and same is still pending. Admittedly, there is no order of stay against the Tribunal order.

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5. The petitioner has also filed O.A.No.4808 of 2001 for a direction against the respondent to promote him as Deputy Superintendent of Police and the said application was allowed by the Tribunal on 08.04.2002 with a direction to the respondents to consider the petitioner for promotion to the post of Deputy Superintendent of Police. The said order of the Tribunal was challenged by the respondent in W.P.No.25447 of 2003 before this court. Even though while admitting the writ petition, there was a stay of the order of the Tribunal, admittedly, the said stay order was vacated by this court on 21.07.2006. Since the punishment have been set aside and only the respondents have filed the writ petitions in two cases which are pending, the petitioner has ultimately moved the Tamil Nadu Administrative Tribunal by filing O.A.No.1956 of 2004 for a direction to the respondents to consider him for promotion to post of Deputy Superintendent of Police by transfer of service. While allowing the said O.A. the Tribunal by an order dated 12.05.2004 has passed an order, which as follows:

> "6. Now that the punishment held against the applicant justifying non-inclusion of name in the panel dated 12.12.2000, have been removed and all the punishments have been set aside, respondents are directed to consider the name of applicant in the panel for the year 1999-00 for promotion to the post of Deputy Superintendent of Police if he is otherwise eligible. The application is allowed and ordered in these terms."

6. According to the petitioner the order of the Tribunal dated 12.05.2004 has become final, since the respondents have not challenged that order. In these circumstances, the petitioner has filed the present writ petition for a direction against the respondent to implement the order of the Tribunal dated 12.05.2004.

7. Mr.Venkataramani learned counsel appearing for the petitioner while narrating the entire facts, as stated above, has also contended that on the facts and circumstances of the case and especially when all the charges framed against the petitioner have been held in favour of the petitioner exonerating him from all the charges,there is absolutely no impediment on the part of the respondents to promote the petitioner to the post of Deputy Superintendent of Police with effect from the panel 1999 - 2000 the date when he was eligible.

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8. When the matter came up for admission, this court has directed the learned Special Government Pleader to take notice and today Mr.G.Shankaran, learned Special Government Pleader appearing for the respondents, on instructions submitted that in fact the second respondent has sent a proposal to the first respondent on 14.09.2005, for promotion of the petitioner as Deputy Superintendent of Police as a temporary measure. He would contend that the said proposal has been sent in accordance Rule 39 of the Tamil Nadu State Subordinate Service Rules.

9. According to the learned Special Government Pleader, inasmuch as the writ petitions filed by the respondents are pending before this Court challenging the various orders of the Tamil Nadu Administrative Tribunal in which the punishment imposed against the petitioner have been set aside, it should be taken that the charges are pending and therefore, the respondents would promote the petitioner by way of a temporary measure in accordance with the said Rule 39. That apart, the learned Special Government Pleader has no answer for the factual statements narrated above. Admittedly all the charges have been set aside by the Tribunal and what are pending before this court are the writ petitions against the orders of the Tribunal and it is also admitted that there are no orders of stay by this court against the orders of the Tribunal so as to presume that the charges are still pending as on date.

10. I have heard the learned counsel for the petitioner as also the learned Special Government Pleader and perused the entire records.

11. As it is correctly pointed out by the learned counsel for the petitioner based on which the above facts have been enumerated which are not in dispute, it remains the fact that as on date the petitioner is not suffering any punishment. In fact, the said fact has been considered in detail by the Tamil Nadu Administrative Tribunal in the order dated 12.05.2004 passed in O.A.No.1956 of 2004 by giving direction to the respondents to promote the petitioner to the post of Deputy Superintendent of Police for the year 1999-2000 if the petitioner was otherwise eligible. The order of the said Tribunal has not been questioned in any were. The Tribunal has considered about all charges and therefore, it cannot be stated that the petitioner is not qualified.

12. The contention of the learned Special Government Pleader that the steps are taken to give temporary promotion to the petitioner is also unsustainable. In this regard a reference to rule 39 of the Tamil Nadu State and Subordinate Services Rule relied on by the learned counsel for the respondent would be

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relevant:

> "39. Temporary promotion -
> *(a) (i) Where it is necessary in the public interest owing to an emergency which has arisen to fill immediately a vacancy in a post borne on the cadre of a higher category in a service or class by promotion from lower category and there would be undue delay in making such promotion a person, who possesses the qualifications prescribed for the post, otherwise than in accordance with the rules.
>
> (b) Where it is necessary to fill a short vacancy in a post borne on the cadre of a higher category in service or class by promotion from lower category and the appointment of the person who is entitled to such promotion under the rules would involve excessive expenditure on travelling allowance or exceptional administrative inconvenience, the appointing authority may promote any other person who possesses the qualification if any prescribed for the higher category.
>
> (c) A person temporarily promoted under sub-rule (a) shall be replaced as soon as possible by the member of the service, who is entitled to the promotion under the rules.
>
> (d) Where it is necessary to promote an officer against whom an enquiry into allegations of corruption or misconduct is pending the appointing authority may promote him temporarily pending enquiry into the charges against him. The competent authority shall have discretion to make regular promotion in suitable cases."

13. Therefore, a reading of the said provision relied upon by the learned Special Government Pleader contemplate that in cases were due to emergency of vacancy has to be filled up immediately or in cases where the regular promotion will involve excessive expenditure on travelling allowances or exceptional administrative inconveniences, the appointing authority is empowered to promote any person possessing qualifications from the lower category temporarily and such person who is temporarily promoted will be replaced as soon as the regular members of service are appointed in accordance with law. The Rule 39(D) enables the appointing authority to promote any officer against whom an enquiry into an allegation of corruption or misconduct is pending to promote him pending enquiry into charges against him. It is relevant to point out that under this clause the competent authority is also empowered by giving discretion to make regular promotion in suitable cases. As I have stated earlier, the facts

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and circumstances shown that there is no enquiry into allegation of corruption is pending against the petitioner and in fact after completion of the enquiry, the charges have been quashed and in one case the Government itself has issued an order implementing the order of Tribunal wherein the punishment of postponement of increment for three years with cumulative effect with effect from 04.02.2006 was set aside by the Tribunal.

14. In view of the said factual circumstances, I do not think that the respondents can be permitted to make a temporary promotion of the petitioner especially in the circumstances that the Tamil Nadu Administrative Tribunal in the final order dated 12.05.2004 passed in O.A.No.1956 of 2004 has given a clear direction stating that the petitioner should be promoted as a Deputy Superintendent of Police in the panel of promotion for the year 1999-2000.

15. In view of the above said facts and circumstances, this is not even a case in which promotion can be given pending disciplinary proceedings and without prejudice to the disciplinary proceedings as laid down by the Hon'ble Apex Court in the State of Punjab and others Vs. Chamanlal Goyal 1995(2) S.C.C.570

16. In view of the above said facts and circumstances the writ petition stands allowed with a direction to the respondents to implement the order of the Tribunal in O.A.No.1956 of 2004 dated 12.05.2004 and promote the petitioner as Deputy Superintendent of Police accordingly if there are no other legal impediment and such order shall be passed within a period of eight weeks from the date of receipt of a copy of this order. No costs.
nbj

Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

1. The Secretary to Government
   Home (Police II) Department,
   Fort St.George, Chennai 9.

2. The Director General of Police,
   Radhakrishnan Salai,
   Mylapore, Chennai 4.

3. The Deputy Registrar (Writs)
High Court, Madras - 104.

+ one cc to the Government Pleader sr no. 42742

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